

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,

Plaintiffs,

V.

PETROSAURUS, INC., ALEXANDER
COHEN, SCOTT HALL, LINDSAY
HALL, KRYSTLE RODRIGUEZ, AND
HEIDI FLAIG,

Defendants.

Civil Action No. 5:22-cv-00936

ORIGINAL COMPLAINT

Plaintiff Fidelity and Deposit Company of Maryland (the “Surety”) files this Original Complaint against Defendants Petrosaurus, Inc., Alexander Cohen, Scott Hall, Lindsay Hall, Krystle Rodriguez, and Heidi Flaig (collectively, the “Indemnitors”).

I.
PARTIES

1. Fidelity and Deposit Company of Maryland (“F&D” or the “Surety”) is an Illinois corporation in the insurance business with a statutory home office and principal place of business located at 1299 Zurich Way, Schaumburg, Illinois. F&D is authorized to transact business and has transacted business in Texas. For jurisdiction purposes, F&D is a citizen of the State of Illinois.

2. Petrosaurus, Inc. (“Petrosaurus”) is a Texas corporation with its principal place of business in Somerset, Texas, and may be served with process by serving its registered agent, Alexander Cohen, at 20905 State Highway 16 S, Van Ormy, TX 78073 or 2300 Enfield Rd, Unit

302, Austin, TX, or wherever he may be found. For jurisdiction purposes, Petrosaurus is a citizen of the State of Texas.

3. Alexander Cohen (“Cohen”) is an individual resident of the State of Texas who may be served with process at 20905 State Highway 16 S, Van Ormy, TX 78073 or 2300 Enfield Rd, Unit 302, Austin, TX, or wherever he may be found. Cohen is a citizen of the State of Texas.

4. Scott Hall is an individual resident of the State of Texas who may be served with process at 820 Lost River Road, San Marcos, Texas 78666, or wherever he may be found. Scott Hall is a citizen of the State of Texas.

5. Lindsay Hall is an individual resident of the State of Texas who may be served with process at 820 Lost River Road, San Marcos, Texas 78666, or wherever she may be found. Lindsay Hall is a citizen of the State of Texas.

6. Krystle Rodriguez (“Rodriguez”) is an individual resident of the State of Texas who may be served with process at 4093 Brook Hollow Drive, Schertz, Texas 78154, or wherever she may be found. Rodriguez is a citizen of the State of Texas.

7. Heidi Flaig¹ (“Flaig”) is an individual resident of the State of Texas who may be served with process at 4093 Brook Hollow Drive, Schertz, Texas 78154, or wherever she may be found. Flaig is a citizen of the State of Texas.

II. JURISDICTION

8. This Court has jurisdiction over the claims asserted herein pursuant to 28 U.S.C. § 1332 in that this is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

¹ Petrosaurus, Cohen, Scott Hall, Lindsay Hall, Rodriguez, and Flaig are collectively referred to herein as the “Indemnitors.”

III.
VENUE

9. The venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) as Defendants Petrosaurus, Rodriguez and Flaig all reside in this judicial district.

IV.
FACTUAL BACKGROUND

10. On or about September 21, 2020, Indemnitors executed a P-5 Application for Financial Assurance Bonding (“2020 P-5 Application”). A true and correct copy of the 2020 P-5 Application is attached as **Exhibit A**. Indemnitors executed and delivered the 2020 P-5 Application to the Surety as consideration for and as a condition precedent to the issuance of certain surety bonds on behalf of the Indemnitors in connection with certain oil and gas operations within the jurisdiction of the Texas Railroad Commission (“TRRC”).

11. In reliance upon the indemnity agreement in the 2020 P-5 Application and at the request of the Indemnitors, on October 9, 2020, the Surety issued a renewal of a Blanket Performance Bond, LPM9068351, naming the Texas Railroad Commission as obligee and Petrosaurus as the principal, for the amount of \$250,000.00, for the benefit of Petrosaurus and the Indemnitors (the “Bond”).

12. On or about October 20, 2021, TRRC made a claim on the Bond issued by the Surety. TRRC demanded the face amount of the bond absent Petrosaurus’ compliance with TRRC rules within sixty days. Petrosaurus failed to meet TRRC’s requirements. On or about July 1, 2022, the Surety paid TRRC \$250,000.00 to resolve its claim on the Bond.

13. As a result of TRRC’s claim, the Surety has incurred losses, costs, and expenses (including but not limited to, interest, court costs, counsel fees, attorneys’ fees, and expenses for procuring a release from liability under the Bond) (“Surety Loss”). The Surety Loss as of July 31,

2022, is \$257,633.50. The Surety is also exposed to additional losses, costs, and expenses as a result of pursuing its rights to indemnity, all of which the Surety is entitled to recover at trial.

14. The 2020 P-5 Application contained an indemnity agreement in which the Indemnitors agreed, jointly and severally, as follows:

[T]o indemnify [the Surety] against all loss, liability, costs, damages, attorney's fees, and any other expenses which [the Surety] might incur or sustain by reason of executing said bond, making an investigation on account thereof, in prosecuting or defending an action thereon, in obtaining a release therefrom, and enforcing this Agreement.

See Exhibit A.

15. On July 20, 2022, the Surety made written demand on Indemnitors to reimburse the Surety for its losses, costs, and expenses. A true and correct copy of such demand is attached as **Exhibit B**. Indemnitors have failed to indemnify the Surety as required by the indemnity agreement in the 2020 P-5 Application.

16. As a result of Indemnitors' failure and refusal to honor their obligations under the indemnity agreements in the 2020 P-5 Application, the Surety brings this lawsuit against the Indemnitors seeking the following legal and equitable relief.

V.
CAUSES OF ACTION
COUNT ONE
BREACH OF CONTRACT

17. The Surety incorporates the allegations in Paragraphs 1-17 above as if fully set forth herein.

18. The Indemnitors have an obligation under the indemnity agreements to, among other things, indemnify the Surety from any and all loss, liability, costs, damages, attorney's fees, and any other expenses related to the Bond, any claim on the Bond, any act of the Surety to protect, preserve, or lessen the Surety's liability or alleged liability, and enforcement of the indemnity

agreements. The Surety demanded that Indemnitors honor their obligation; however, despite such demand, Indemnitors have failed and refused to fulfill their contractual obligation.

19. As a result of the Indemnitors' breaches of the indemnity agreements, the Surety has sustained losses, costs, and expenses, including, but not limited to, attorneys' fees, for procuring a release from liability under the Bond. The Surety will continue to sustain additional losses, costs, and expenses, including but not limited to attorney's fees, in pursuing and protecting its rights under the indemnity agreements.

COUNT TWO
ATTORNEYS' FEES

20. The Surety incorporates the allegations in Paragraphs 1-20 above as if fully set forth herein.

21. The Indemnitors are obligated to indemnify the Surety pursuant to the indemnity agreement in the 2020 P-5 Application, but the Indemnitors have failed to comply with their obligations. As a result of the failure of the Indemnitors to indemnify the Surety, the Surety has been compelled to engage the law firm of Clark Hill, PLC, to bring this action against the Indemnitors for the enforcement of the indemnity agreements. Pursuant to the terms of the indemnity agreements, the Surety is entitled to recover from the Indemnitors attorney's fees incurred, not only in the prosecution of this suit but in the investigation and response to the claims asserted against the Bond issued by the Surety.

22. In addition to its right to attorneys' fees under the indemnity agreements, the Surety is entitled to reasonable attorneys' fees in addition to the amount of its damages suffered as a result of the Defendant's breach of contract pursuant to § 38.001 of the Texas Civil Practice & Remedies Code.

COUNT THREE
COSTS AND INTEREST

23. The Surety incorporates the allegations in Paragraphs 1-23 above as if fully set forth herein.

24. The Surety is entitled to recover from the Indemnitors, jointly and severally, all costs of court, plus pre-judgment and post-judgment interest at the maximum legal rate allowed by law.

VI.
CONDITIONS PRECEDENT

25. All conditions precedent to the Surety's entitlement to assert the above claims and causes of action have occurred or have been satisfied, waived, or excused.

VII.
REQUEST FOR RELIEF

The Surety requests that the Indemnitors be cited to appear and answer this Complaint and that the Court award the Surety judgment against the Indemnitors, jointly and severally, and in favor of the Surety for all damages including, but not limited to, attorneys' fees incurred by the Surety through the time of trial, as a result of the Indemnitors' breach of contract, along with pre- and post-judgment interest at the maximum amount allowed by law, and award the Surety such other and further relief to which it is justly entitled.

Dated this 26th day of August 2022.

Respectfully Submitted,

/s/ Laura Richards Sherry

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